

IN THE MATTER OF THE INTEREST ARBITRATION )  
BETWEEN )  
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS )  
LOCAL 448 )  
THE "UNION" )  
AND )  
CITY OF HELENA, MONTANA )  
THE "CITY" )

INTEREST  
ARBITRATOR'S  
OPINION  
AND  
AWARD  
  
WAGES

HEARING DATE: March 14, 1991

ARBITRATOR: John H. Abernathy  
9 Monroe Parkway, Suite 280  
Lake Oswego, OR 97035-1425

APPEARING FOR THE UNION:

Mike Pickard, Attorney

Pat Clinch, Secretary, IAFF Local 448

Steve Larson, Firefighter, IAFF Local 448

Kevin Kelly, Firefighter, IAFF Local 448

Earl Hall, Firefighter, IAFF Local 271  
State Council V.P.

APPEARING FOR THE CITY:

Randy Lilje, Community Facilities Director,  
Chief Negotiator

David N. Hull, City Attorney

Phil Hauce, Budget Analyst

Don Hurni, Fire Chief

Mike Foster, Assistant Fire Chief

**RECEIVED**

**APR 04 1991**

DEPARTMENT OF LABOR & INDUSTRY  
EMPLOYMENT RELATIONS DIVISION

## EXHIBITS

### Union

1. Summary of Negotiations
2. Class One Cities - Comparisons
  - A. Monthly Salary - Base Pay Only
  - B. Monthly Salary - Base Pay + Medical + Uniform
  - C. Monthly Salary - Base + Medical + Unif + EMT
  - D. Hourly Salary - Base Pay Only
  - E. Hourly Salary - Base Pay + Medical + Uniform
  - F. Hourly Salary - Base + Med + Unif + EMT
  - G. Monthly Salary - Captain with 20 years' seniority
    - (1) Base only
    - (2) Base + Longevity
    - (3) Base + Medical + Uniform + Longevity
    - (4) Base + Medical + Uniform + EMT + Longevity
  - H. Hourly Salary - Captain with 20 Years' Seniority
    - (1) Population
    - (2) Medical Insurance
    - (3) Vacation
    - (4) Longevity
    - (5) Hours
3. Cost of Living Indices - CPI, CPIW, Social Security
4. Class One Cities - 1987 Comparisons
5. Productivity - Emergency Responses and Fire Loss
6. Population Comparisons
7. "Other Services" Comparisons
8. Mill Levy (Tax Rate) Charts
9. General Fund Pay Raise Comparisons (Equity Argument)
10. Newspaper Articles (Ability to Pay Argument)
11. Mayor Russ Ritter's "State of the City" Address
12. Fiscal Year Budget Message - June 1990
13. Fiscal Year Budget Message - August 1990
14. Memorandum of Agreement - July 1989 to July 1990
15. Factfinder's Findings and Recommendations - October 1990
16. Arbitrator's Opinion and Award - Gary Axon - 1987, Missoula
17. Factfinder's Report - Katherine Althen - 1986, Butte
18. Expenditure Summaries - from Helena Budgets 1986-1989
19. Arbitration for Firefighters Statute
20. Correspondence
21. Helena Fire Department Annual Report - 1989
22. Helena Fire Department Annual Report - 1988
23. Helena Fire Department Annual Report - 1987
24. Helena Fire Department Annual Report - 1986
25. Helena Fire Department Annual Report - 1985
26. City of Helena - Annual Budget - FY91
27. Fire in Montana - State Fire Marshall Report - 1991

### City

1. Montana Cities - Fire Department Comparisons Wages and Benefits
2. Salary and Benefit Survey
3. Percent of Work Time Chart from San Diego CA Fire Department

### INTRODUCTION

Montana's Arbitration for Firefighters Statute (MCA 39 - 34-101 through 106) provides that if in the course of collective bargaining between a public employer and a firefighters' organization an impasse is reached and if the statutory procedures for mediation and factfinding (MCA 39-31-307 through 310) have been exhausted, then either party may petition the Board of Personnel Appeals for final and binding interest arbitration. IAFF Local 448 made such a petition and I was notified by the Board of Personnel Appeals by letter dated December 20, 1990 that I had been chosen to serve as interest arbitrator in this bargaining dispute. I contacted the parties by telephone to accept the appointment and arrange a mutually acceptable hearing date. By letter I asked the parties to provide me with a list of issues in dispute, their last best offer on each issue and any proposed contract language seven (7) days before the hearing. Both parties complied.

The hearing took place on the scheduled date of March 14, 1991 at the City/County Building in Helena, Montana. Mr. Mike Pickard, Attorney, represented the Union and Mr. David N. Hull, City Attorney, represented the City. The parties made opening statements. Documents and sworn testimony was



received. Witnesses were cross-examined. The parties chose to submit post-hearing briefs. Upon receipt of those briefs on March 25, 1991, this case stood fully submitted for decision.

#### BACKGROUND

The City of Helena, with a 1990 population of 24,569, is the largest City in Lewis and Clark County (population 47,495) and is the metropolitan center for the areas as well as the State Capital of Montana. Consequently, the day-time population of the City during day-time work hours often is around 42,000 because of the influx of commuting workers, legislators and their staffs, and tourists. In addition to an extensive residential area, Helena boasts a large and developed downtown area, numerous state and federal buildings and a number of industrial and railroad facilities.

Firefighters employed by the City of Helena provide fire protection to the City and to other areas or facilities (e.g. Fire District No. 3, the Veteran's Administration) who contract with the City for fire protection services. The City employs 321 fire department personnel - 30 of which are in the bargaining unit represented by IAFF Local 448. These personnel normally maintain two fire stations housing six pieces of equipment and the normal staffing at each station is 3. The number of personnel employed by the Department has not increased in the past 5 years and has increased by only 3 persons in the past 10 years.

The Union opened negotiations on April 25, 1990 by notifying the City by letter of its intent to open the contract. The Union presented a list of thirteen demands including a demand for a wage increase of 7% per year for each year in a two-year agreement. The City countered with a wage freeze the first year and a 1% increase in wages in the second year. After negotiation sessions in May, June and early July, the Firefighters requested on July 16 that the State Board of Personnel Appeals appoint a mediator. A mediator was appointed on July 25 and mediation sessions were held on August 22 and September 4. On September 6 the City petitioned for factfinding and a factfinding hearing was held on October 6th. On October 28 the factfinder released a report recommending a \$50 per month wage increase for battalion chiefs and a 2.7% increase of all other positions. The Firefighters rejected the factfinder's report. The parties held a negotiations session on November 14, but were unable to reach an agreement on the remaining issues in dispute. On November 26 the Firefighters petitioned for arbitration and I was selected to serve as arbitrator on December 18, 1990.

The parties held additional bargaining sessions on January 2, 1991 and March 8, 1991, but again were unable to reach agreement. The City had by this time adopted the factfinder's recommendation as their position while the Union was at 4.8% for the first year and 5.3% the second year.

By the time of the arbitration hearing the Union was at 4.8% for each year; the City was holding to the factfinder's

position for the first year and a 4.04% (and maybe more) wage increase for the second year.

#### POWERS AND DUTIES OF THE ARBITRATOR

MCA 39-34-103 defines the powers and duties of the arbitrator as follows:

39-34-103. Powers and duties of arbitrator for firefighters and public employers.

- (1) The arbitrator shall establish dates and a place for hearings and may subpoena witnesses and require the submission of evidence necessary to resolve the impasse.
- (2) Prior to making a determination on any issue relating to the impasse, the arbitrator may refer the issues back to the parties for further negotiation.
- (3) At the conclusion of the hearings, the arbitrator shall require the parties to submit their respective final position on matters in dispute.
- (4) The arbitrator shall make a just and reasonable determination of which final position on matters in dispute will be adopted within 30 days of the commencement of the arbitration proceedings. The arbitrator shall notify the board of personnel appeals and the parties, in writing, of his determination.
- (5) In arriving at a determination, the arbitrator shall consider any relevant circumstances, including:
  - (a) comparison of hours, wages, and conditions of employment of the employees involved with employees performing similar services and with other services generally;
  - (b) the interests and welfare of the public and the financial ability of the public employer to pay;
  - (c) appropriate cost-of-living indices;



(d) any other factors traditionally considered in the determination of hours, wages, and conditions of employment.

(6) The determination of the arbitrator is final and binding and is not subject to the approval of any governing body.

MCA 39-34-106 provides that the cost of arbitration shall be shared equally by the public employer and the Firefighters Union.

39-34-106. Cost of arbitration. The cost of arbitration shall be shared equally the public employer and the firefighters' organization or its exclusive representative.

#### ISSUES IN DISPUTE AND FINAL OFFERS

The issues in dispute are the size of the wage increase in the first and second year of the labor contract between the parties.

For the first year the Union has proposed a wage increase of 4.8% for all positions in the bargaining unit. The City proposed to increase the salary of battalion chiefs by \$50 and to increase the salary paid all other ranks by 2.75%. A comparison of those final offers for the first year follows:

	No. Employees In This <u>Position</u>	Current Hourly <u>Wage</u>	Union's FY91 Final <u>Offer</u>	City's FY91 Final <u>Offer</u>
Battalion Chief	3	12.154	12.74	11.760
Captain	3	11.550	12.10	11.867
Lieutenant	3	10.946	11.47	11.247
Engineer	3	10.479	10.98	10.768
Firefighter III	10	10.209	10.70	10.490
Firefighter II	2	9.907	10.38	10.180
Firefighter I	1	9.743	10.21	10.011
Confirmed Firefighter	2	9.595	10.06	9.859
Probationary	1	7.481	7.84	7.687
Fire Marshal	1	13.235	13.87	13.895
Deputy Fire Marshal	1	12.577	13.18	12.923

According to Union's submission the first year salary increase is to be retroactive to July 1, 1990.

The City estimated that a 1% wage increase in the first year of the contract would cost \$8,393. Assuming that figure to be accurate, a 4.8% first year wage increase would cost the City \$40,286 additional salary dollars while a 2.75% wage increase would cost the city \$23,081 additional salary dollars. For the first year the parties are 2.05% or \$17,205 apart. At this time it is not possible to calculate the cost of the wage proposals of each party in the second year because first year wages have not been determined.



### ANALYSIS

MCA 29-34-103(5) (a) through (d) sets forth the factors or criteria an interest arbitrator must consider in arriving at a determination of which final position will be adopted: comparability, ability to pay, appropriate cost-of-living indices, and any other factors traditionally considered in the determination of wages. These criteria become the "chapter headings" for both the presentation of materials by the parties and for the interest arbitrator's analysis and will be used as such in this analysis.

Comparability - The basic considerations under this criteria are: what other jurisdictions are comparable to the city of Helena; what is to be compared, and what do these comparisons show?

Basically each party to this dispute used the following set of comparable jurisdictions: Billings (110 firefighters), Kalispell (20), Missouli (59), Great Falls (61), Bozeman (20), Butte (20), Anaconda (5), Havre (16). Therefore there is no dispute as to the comparable jurisdictions.

There is a dispute as to what should be compared, how salaries are calculated and what these comparisons show. The Union, for example, provided data on the monthly salaries for confirmed firefighters and captains; the City provided comparable data for all ranks except Fire Marshal and Deputy Fire Marshal. Neither side provided me information on how monthly salaries were calculated. the Union compared FY90 salaries but the City compared FY91 salaries. Each party assumed that the same job

compared FY91 salaries. Each party assumed that the same job title automatically means the same duties and responsibilities; an assumption I find is difficult to accept when the fire departments compared vary in size from 5 to 110 firefighters. Job descriptions from each of the comparable jurisdictions on each position would have made it easier to compare jobs with the same or similar job duties and responsibilities. Without these job descriptions, comparisons by job title are at best shaky and any conclusions drawn from them are tenuous. Nevertheless, the data provided by the parties, with all its flaws, is the only data that I have before me.

The Union data, based on current salaries, show the following:

	<u>Range</u>	<u>City Average</u>
Confirmed Firefighter	1535 to 2045	1838
Captain	1677 to 2382	2097

The salaries for these ranks in Helena places them 6th on the ranking of salaries for confirmed firefighters and 5th for Captain.

The City's data taken from City Exhibit B for the same job titles using FY91 salaries show the following:

	<u>Range</u>	<u>City Average</u>
Confirmed Firefighter	1535 to 2045	1839
Captain	1677 to 2382	2104

Thus both parties are using essentially the same data and the core of the difference is where should Helena firefighter salaries fall in the range.

I find that proper placement in the range is mainly based on what each party thinks is fair and reasonable.

Based on my analysis of the comparability data produced by both sides, I do feel that comparability supports both parties' position about equally.

Ability-to-Pay - The City admitted in the hearing that it had the ability to pay the wage increases demanded by the firefighters in both years. The City made it very clear that it did not think it would be "fiscally responsible" to pay the amount demanded by the firefighters for FY91.

I find that the City has not advanced a true inability to pay argument nor has the City proven an inability to pay. Rather the City has advanced an unwillingness to pay argument. I find that the evidence supports a finding that the City has the ability to pay the wages demanded by the Union for both years of the Agreement.

Cost of Living - The Union presented Consumer Price Index data from the October, 1991 Monthly Labor Review. The CPI for all urban consumers registered a 4.7% annual increase in 1989 and a 5.5% increase in 1990.

The City did not dispute this data or the source of the Union's data but argued instead that the CPI was not "appropriate" for Montana.



I find that having advanced the "not appropriate" theory, the City has the burden of proving this affirmative defense. This they failed to do. Not only is CPI data commonly used as the appropriate index in labor relations and comparisons of cost of living in different areas of the country, it is the only nationally recognized index available.

I find that the cost of living data supplied by the Union to be completely appropriate and that it completely supports the Union's FY91 wage proposal.

Other Factors - The other factors most commonly used are wage increases of other groups in the City and within the same geographical area and productivity. The Union presented data showing that the FY91 wage increase for management personnel in the City ranged from 1.92% to 13.7% and that other wage increases in the area ranged from 2% to slightly over 6%. None of this data was rebutted by the City. Consequently, I find that the evidence on this criteria slightly supports the Union's FY91 wage demand.

On balance I conclude and find that the evidence submitted supports the Union's last offer of 4.8% for FY91 and I will enter an award reflecting my finding and conclusions.

Turning to the wage increase for the second year of the contract, I find that the parties did not make presentations on comparability, ability to pay or cost of living for the second year. In part this is due to the lack of data and in part is due to the fact that they are not that far apart in their final offers. Analysis of the final wage offer of the Union and the

City for the second year of the contract will turn entirely on the remaining criterion - other factors.


As noted earlier, for FY92 the parties are about 3/4 of 1% or approximately \$6,500 to \$7,000 apart. Thus in terms of cost alone, these positions are not significantly different. The major difference lies in the degree of certainty each offer involves. The Union's proposal offers certainty to both City budget officials and firefighters. The Union's proposal also offers the certainty that the collective bargaining agreement is "locked-up" for both years of the two-year agreement. The City's proposal is for a guaranteed 4.04% increase plus that part of the anticipated 30% increase in insurance costs not needed to pay for the increase in insurance premiums. The insurance component of the City's offer injects a degree of uncertainty in the City's proposal and could create an area for distrust and disagreement, e.g. who calculates the insurance premium increase and determines how much of the 30% was used. In order to provide certainty and to avoid possible disputes, I shall enter an award adopting the Union's wage proposal for the second year of the agreement.

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LOCAL 448	)	
	)	
THE "UNION"	)	
	)	
AND	)	
	)	
CITY OF HELENA, MONTANA	)	
	)	
THE "CITY"	)	WAGES

After careful consideration of all oral and written arguments and evidence, and for the reasons set forth in the opinion that accompanies this award, it is awarded that:

1. The wage increase for the first year of the agreement shall be the Union's final offer of a 4.8% wage increase for all positions effective July 1, 1990.
2. The wage increase for the second year of the agreement shall be the Union's final offer of a 4.8% wage increase for all positions effective July 1, 1991.

Respectfully submitted on this the 2<sup>nd</sup> day of April, 1991 by:

  
 John H. Abernathy  
 Arbitrator